

Instructions on Non-disclosure for Recovery Accountability and Transparency Board regarding Whistleblower Protection Enhancement Act of 2012

The Whistleblower Protection Enhancement Act of 2012 (WPEA) was signed into law on November 27, 2012 (P.L. 112-199). The law strengthens protections for federal employees who disclose evidence of waste, fraud, or abuse. In addition, the WPEA modifies rules on the use of non-disclosure policies, forms, or agreements (NDAs) by government agencies.

Among other requirements, the WPEA provides the following: “Agencies making use of any nondisclosure policy, form, or agreement shall also post the statement required under section 2302(b)(13) of title 5, United States Code (as added by this Act) on the agency website, accompanied by the specific list of controlling Executive orders and statutory provisions.”

In light of this requirement the Recovery Accountability and Transparency Board posts the following statement and directs current and former Recovery Accountability and Transparency Board employees to read the below statement as if it were incorporated into the any non-disclosure policy, form, or agreement they may have signed.

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling executive orders and statutory provisions are incorporated into this agreement and are controlling.

Additionally, please be aware of the following executive orders and statutory provisions. These provisions control in the case of any conflict with an agency NDA:

- Executive Order No. 13526;
- Section 7211 of Title 5, United States Code (governing disclosures to Congress);

- Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military);
- Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats);
- Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents);
- The statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and
- Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)).